

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Juana Gutierrez,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-13-02168-PHX-DGC

**ORDER**

14  
15 Plaintiff Juana Gutierrez has filed a motion for reconsideration (Doc. 20) of the  
16 Court's August 25, 2014 order remanding the case for further proceedings (Doc. 19).  
17 The Court will deny the motion.

18 Plaintiff argues that the case should have been remanded for an award of benefits  
19 based on the "credit-as-true" rule rather than for further proceedings. Doc. 20 at 2.  
20 Plaintiff argues that the opinions of Drs. Moya and Suarez, if credited as true, would  
21 establish disability as a matter of law and would not require interpretation by a vocational  
22 expert. Doc. 20 at 2. Plaintiff cites SSR 96-8p for the proposition that "an individual  
23 who cannot sustain a full time work pace – 8 hours a day, 5 days a week – is disabled[.]"  
24 *Id.* The Court is not convinced that Plaintiff accurately reads the regulation, nor is it  
25 convinced that the limitations assessed by Drs. Moya and Suarez would preclude all work  
26 for Plaintiff.

27 In *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996), the Ninth Circuit held  
28 that evidence should be credited and an action remanded for an immediate award of

1 benefits when the following three factors are satisfied: (1) the ALJ has failed to provide  
2 legally sufficient reasons for rejecting evidence; (2) there are no outstanding issues that  
3 must be resolved before a determination of disability can be made; and (3) it is clear from  
4 the record that the ALJ would be required to find the claimant disabled were such  
5 evidence credited. Plaintiff correctly notes that even where the requirements of the  
6 credit-as-true rule are met, the Court may “remand for further proceedings when the  
7 record as a whole creates serious doubt as to whether the claimant is, in fact, disabled.”  
8 *Garrison v. Colvin*, -- F.3d --, 2014 WL 3397218, at \*21 (9th Cir. 2014).

9 An analysis of the opinions of Drs. Moya and Suarez demonstrates the existence  
10 of outstanding issues and provides serious doubt as to whether the record establishes that  
11 Plaintiff is disabled. Dr. Suarez opined that Plaintiff had no restrictions on standing or  
12 walking (A.R. 230), while Dr. Moya opined that Plaintiff could sit for more than four  
13 hours but less than six and stand or walk for less than 2 hours (A.R. 333). The vocational  
14 expert was asked a hypothetical about a person that could stand, sit, and walk for six  
15 hours per day and based her opinion on those restrictions. A.R. 40. She did not consider  
16 the limitations assessed by Dr. Suarez. Assuming the opinion of Dr. Suarez regarding  
17 Plaintiff’s unlimited ability to stand and walk were credited as true, the Court cannot  
18 conclude that an award of benefits would be required. This evidence creates serious  
19 doubt as to whether Plaintiff is disabled and is precisely the type of outstanding issue for  
20 which further proceedings would serve a useful purpose. Accordingly, the Court will not  
21 reconsider its decision to remand the case for further proceedings.

22 **IT IS ORDERED** that Plaintiff’s motion for reconsideration (Doc. 20) is **denied**.

23 Dated this 12th day of September, 2014.

24  
25  
26 

27 \_\_\_\_\_  
28 David G. Campbell  
United States District Judge